

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Sep 08, 2022**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARIA R.,<sup>1</sup>

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant.

No. 4:21-cv-5091-EFS

**ORDER DENYING PLAINTIFF'S  
SUMMARY-JUDGMENT MOTION,  
GRANTING DEFENDANT'S  
SUMMARY-JUDGMENT MOTION,  
AND AFFIRMING THE ALJ**

Plaintiff Maria R. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because Plaintiff does not show that the ALJ committed consequential error in his evaluation of Plaintiff's symptom reports or the opinions of her medical providers, the Court denies Plaintiff's motion, grants that of the Commissioner, and affirms the ALJ's decision.

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<sup>1</sup> For privacy reasons, the Court refers to Plaintiff by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

## I. Five-Step Disability Determination

A five-step sequential evaluation process is used to determine whether an adult claimant is disabled.<sup>2</sup> Step one assesses whether the claimant is engaged in substantial gainful activity.<sup>3</sup> If the claimant is engaged in substantial gainful activity, benefits are denied.<sup>4</sup> If not, the disability evaluation proceeds to step two.

Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.<sup>5</sup> If the claimant does not, benefits are denied.<sup>6</sup> If the claimant does, the disability evaluation proceeds to step three.

Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner as so severe as to preclude substantial gainful activity.<sup>7</sup> If an impairment or combination of impairments meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled.<sup>8</sup> If not, the disability evaluation proceeds to step four.

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<sup>2</sup> 20 C.F.R. §§ 404.1520(a), 416.920(a).

<sup>3</sup> *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

<sup>4</sup> *Id.* §§ 404.1520(b), 416.920(b).

<sup>5</sup> *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

<sup>6</sup> *Id.* §§ 404.1520(c), 416.920(c).

<sup>7</sup> *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

<sup>8</sup> *Id.* §§ 404.1520(d), 416.920(d).

1 Step four assesses whether an impairment prevents the claimant from  
2 performing work that was performed in the past, by determining the claimant's  
3 residual functional capacity (RFC).<sup>9</sup> If the claimant can perform past work,  
4 benefits are denied.<sup>10</sup> If not, the disability evaluation proceeds to step five.

5 Step five assesses whether the claimant can perform other substantial  
6 gainful work—work that exists in significant numbers in the national economy—  
7 considering the claimant's RFC, age, education, and work experience.<sup>11</sup> If so,  
8 benefits are denied. If not, benefits are granted.<sup>12</sup>

9 The claimant generally has the initial burden of proof under steps one  
10 through four.<sup>13</sup> If the claimant meets the required showing, at step five, the  
11 burden shifts to the Commissioner to show why the claimant is not entitled to  
12 benefits.<sup>14</sup>

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17 <sup>9</sup> 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

18 <sup>10</sup> *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

19 <sup>11</sup> *Id.* §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497–98  
20 (9th Cir. 1984).

21 <sup>12</sup> 20 C.F.R. §§ 404.1520(g), 416.920(g).

22 <sup>13</sup> *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

23 <sup>14</sup> *Id.*

## II. Factual and Procedural Summary

In August 2015, Plaintiff filed applications for disability under Titles 2 and 16, alleging an onset date of March 1, 2015.<sup>15</sup> Her claims were denied initially and on reconsideration.<sup>16</sup>

### A. The 2018 Hearing and ALJ Decision

In February 2018, ALJ Jesse Shumway held an administrative hearing.<sup>17</sup> During the 2018 hearing, the ALJ received testimony from Plaintiff, vocational expert Stephanie Boeshaar, and medical expert Willie Benton Boone, MD, MS. Then, in April 2018, the ALJ issued a decision denying Plaintiff's disability applications. In conducting the five-step sequential evaluation process, the ALJ made the following findings:

- Plaintiff met the insured status requirements through December 31, 2019.
- Step one: Plaintiff has not engaged in substantial gainful activity since March 1, 2015, the alleged onset date, through the date of the ALJ's decision.

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<sup>15</sup> AR 437–38, 444–49. Based on the application filing date, the pre-March 27, 2017 regulatory framework govern the ALJ's decision as well as the Court's analysis.

*Compare*, 20 C.F.R. §§ 404.1527, 416.927, *with, id.* §§ 404.1520c, 416.920c.

<sup>16</sup> AR 188.

<sup>17</sup> AR 101–125.

- 1 • Step two: Plaintiff has the following medically determinable severe
- 2 impairments: “retinal detachment and phthisis bulbi right eye, status-
- 3 post enucleation in August 2017; and obesity.”<sup>18</sup>
- 4 • Step three: Plaintiff does not have an impairment or combination of
- 5 impairments that met or medically equaled the severity of one of the
- 6 listed impairments.
- 7 • RFC: Plaintiff has the RFC to perform a full range of light work, subject
- 8 to the following additional limitations:
  - 9 ○ “she can only occasionally climb ladders, ropes, and scaffolds”;
  - 10 ○ “she can frequently stoop and climb ramps and stairs”;
  - 11 ○ “she cannot do work that requires depth perception or more than
  - 12 occasional peripheral vision on the right side”; and
  - 13 ○ “she can have no exposure to hazards, such as unprotected heights
  - 14 and moving mechanical parts.”<sup>19</sup>
- 15 • Step four: Plaintiff “is capable of performing past relevant work as an
- 16 agricultural produce sorter.”<sup>20</sup>
- 17 • Step five: “In the alternative, considering the claimant’s age, education,
- 18 work experience, and residual functional capacity, there are other jobs
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20 <sup>18</sup> AR 24, 191.

21 <sup>19</sup> AR 26, 194.

22 <sup>20</sup> AR 29, 197.

1 that exist in significant numbers in the national economy that the  
2 claimant also can perform,” including the representative occupations of  
3 garment folder, tanning salon attendant, and ticket taker.<sup>21</sup> Further,  
4 even if the RFC included the additional limitation of “needing a sit/stand  
5 option,” Plaintiff was capable of performing the requirements of tanning  
6 salon attendant, ticket taker, and inspector/hand packager.<sup>22</sup>

7 **B. The 2019 Remand by the Appeals Council**

8 In March 2019, the Appeals Council found that the ALJ failed to adequately  
9 address some of the mental-health records as well as some of the limiting opinions  
10 expressed by certain medical providers.<sup>23</sup> The Appeals Council remanded the  
11 matter to the same ALJ with instructions to offer Plaintiff the opportunity to have  
12 another hearing and for the ALJ to further evaluate any new evidence, certain  
13 opinions regarding Plaintiff’s functional limitations, Plaintiff’s mental  
14 impairments, Plaintiff’s RFC, the issue of past relevant work, and—if warranted by  
15 the expanded record—the effect of the assessed limitations on Plaintiff’s  
16 occupational base.<sup>24</sup>

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20 <sup>21</sup> AR 198.

21 <sup>22</sup> AR 198–99.

22 <sup>23</sup> AR 209–210.

23 <sup>24</sup> AR 210–211.

1 **C. The 2019 Hearing and ALJ Decision**

2 On remand from the Appeals Council, the ALJ held another hearing in  
 3 August 2019 via video, during which Plaintiff provided further testimony.<sup>25</sup>  
 4 Thereafter, the ALJ issued his second decision, again denying Plaintiff's disability  
 5 applications. Though the ALJ provided additional analysis and explanation, at  
 6 each of the five steps in the sequential evaluation process, the ALJ's conclusions  
 7 were the same as those set forth in his 2018 decision.<sup>26</sup> The only exception being  
 8 that, after finding Plaintiff not disabled at step four, the ALJ did not expressly  
 9 restate at step five the alternative analysis and findings set forth in his 2018  
 10 decision regarding the other representative occupations he found Plaintiff could  
 11 also perform.<sup>27</sup>

12 As relevant here, in ultimately reaching the same conclusions as in 2018, the  
 13 ALJ gave "some weight" to the medical opinion of Derek Leinenbach, MD, and  
 14 "little weight" to that of Juan Hernandez Umana, MD. The ALJ also gave "little  
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 17 <sup>25</sup> AR 126–35. Although it appears that vocational expert Daniel R. McKinney was  
 18 available to appear at the 2019 hearing, he did not present any testimony. *See*  
 19 AR 21, 418. Also, the ALJ's 2019 decision incorrectly indicates that it was  
 20 Mr. McKinney (rather than Ms. Boeshaar) who testified as the vocational expert  
 21 during the initial 2018 hearing. *Compare*, AR 29, *with*, AR 101.

22 <sup>26</sup> *Compare*, AR 24–30, *with*, AR 190–99.

23 <sup>27</sup> *Compare*, AR 29, *with*, AR 198–99.

1 weight” to the opinion of Javier Huerta, PA. The ALJ further explained, “As for  
2 the other opinions previously addressed in the prior decisions, the weight assigned  
3 and reasons given therein remain unchanged and adopted upon review of the  
4 additional evidence.”<sup>28</sup>

5 Plaintiff requested review of the ALJ’s decision by the Appeals Council,  
6 which denied review.<sup>29</sup> Plaintiff then timely appealed to the Court.<sup>30</sup>

### 7 **III. Standard of Review**

8 A district court’s review of the Commissioner’s final decision is limited.<sup>31</sup>  
9 The Commissioner’s decision is set aside “only if it is not supported by substantial  
10 evidence or is based on legal error.”<sup>32</sup> Substantial evidence is “more than a mere  
11 scintilla but less than a preponderance; it is such relevant evidence as a reasonable  
12 mind might accept as adequate to support a conclusion.”<sup>33</sup> Because it is the role of  
13 the ALJ and not the Court to weigh conflicting evidence, the Court upholds the  
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17 <sup>28</sup> AR 29.

18 <sup>29</sup> AR 1.

19 <sup>30</sup> See 20 C.F.R. §§ 404.981, 422.201.

20 <sup>31</sup> 42 U.S.C. § 405(g).

21 <sup>32</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 <sup>33</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.  
23 1997)).



1 ALJ's findings "if they are supported by inferences reasonably drawn from the  
2 record."<sup>34</sup> The Court considers the entire record as a whole.<sup>35</sup>

3 Further, the Court may not reverse an ALJ decision due to a harmless  
4 error.<sup>36</sup> An error is harmless "where it is inconsequential to the ultimate  
5 nondisability determination."<sup>37</sup> The party appealing the ALJ's decision generally  
6 bears the burden of establishing harm.<sup>38</sup>

#### 7 IV. Analysis

8 Plaintiff argues that the ALJ improperly rejected her symptom reports and  
9 erred by failing to assign adequate weight to the opinions rendered by two of her  
10 treating providers: Dr. Hernandez and PA Huerta.<sup>39</sup>

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13 <sup>34</sup> *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

14 <sup>35</sup> *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must  
15 consider the entire record as a whole, weighing both the evidence that supports and  
16 the evidence that detracts from the Commissioner's conclusion," not simply the  
17 evidence cited by the ALJ or the parties.) (cleaned up).

18 <sup>36</sup> *Molina*, 674 F.3d at 1111.

19 <sup>37</sup> *Id.* at 1115 (cleaned up).

20 <sup>38</sup> *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

21 <sup>39</sup> The Court uses "Dr. Hernandez," as it is consistent with his signature line, but  
22 the Court notes that he is also sometimes referred to in the record as "Dr. Umana."  
23 *See, e.g.*, AR 114.

1     **A.     Symptom Reports: Plaintiff fails to establish consequential error.**

2             Plaintiff started experiencing serious eye problems in 2015, when she  
3     underwent cataract extraction with lens implants in both eyes. Over the course of  
4     the next few years, Plaintiff suffered from eye conditions including a retinal  
5     detachment, diabetic retinopathy, and macular edema. She had phthisis bulbi in  
6     her right eye, which the medical expert described as “a blind, painful eye.”  
7     Ultimately, in August 2017, after three attempts at retinal-detachment repair  
8     surgery and a series of eye-injection treatments, Plaintiff underwent surgical  
9     removal (enucleation) of her right eye.<sup>40</sup> She retains vision in her left eye, however,  
10    for which the treatments proved more successful.<sup>41</sup>

11            At the hearings, Plaintiff testified that her eye issues caused her to stop  
12    working in 2015, saying she could no longer see well enough to perform her former  
13    job as a produce inspector/sorter.<sup>42</sup> Although she no longer experienced pain after  
14    her right eye was removed, Plaintiff said that, as of the February 2018 hearing, she  
15    still had difficulty viewing and reading things, both close and far away.<sup>43</sup> She  
16    testified that even after all the treatments she has undergone, her left-eye vision  
17    remains so poor that she struggles with even simple tasks at home, saying eating  
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20   <sup>40</sup> See, e.g., AR 106–07, AR 653, 678, 811, 1033–34.

21   <sup>41</sup> See, e.g., AR 812, 827, 1006, 1130, 1304, 1313.

22   <sup>42</sup> AR 111–12, 114.

23   <sup>43</sup> AR 112, 116.

1 and cooking are particularly hard. She explained, “Cooking [is difficult] because I  
2 can’t see very well what I am putting in the food when I’m cooking.”<sup>44</sup>

3 Additionally, Plaintiff described other problematic symptoms that she  
4 associates with her eyesight, obesity, diabetes, metabolic syndrome, or a  
5 combination thereof.<sup>45</sup> As Plaintiff points out in her current motion, she testified to  
6 experiencing “frequent falls, dizziness, and difficulty standing and walking for long  
7 periods of time.”<sup>46</sup> Plaintiff suggests that these symptoms limit her to sedentary  
8 work.<sup>47</sup>

#### 9 1. The Applicable Standard

10 The ALJ found Plaintiff’s medically determinable impairments “could  
11 reasonably be expected to cause some of the alleged symptoms” but that her  
12 statements regarding the intensity, persistence, and limiting effects of those  
13 symptoms “are not entirely consistent with the medical evidence and other  
14 evidence in the record.”<sup>48</sup> As such, and because the record does not contain  
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17 <sup>44</sup> AR 116.

18 <sup>45</sup> See, e.g., AR 133 (Plaintiff testifying to experiencing dizziness, saying,  
19 “sometimes it’s just suddenly I see dark and I fall,” though she could not say how  
20 frequently this occurred.).

21 <sup>46</sup> ECF No. 14 at 8. See also AR 112–13.

22 <sup>47</sup> See ECF No. 14 at 13.

23 <sup>48</sup> AR 27, 195.

1 affirmative evidence of malingering, the ALJ was required to support his rejection  
2 of Plaintiff's symptom reports by articulating "specific, clear and convincing"  
3 reasons backed by substantial evidence.<sup>49</sup> The ALJ did so.

4           2.     Lack of Objective Medical Evidence

5           The ALJ found "the objective medical evidence and clinical observations to  
6 be quite unremarkable," saying he considered "the lack of supportive objective  
7 evidence to be a particularly compelling factor undermining the claimant's  
8 symptom allegations."<sup>50</sup> The ALJ then specifically explained that the record lacked  
9 evidence showing vision loss in the left eye or showing that Plaintiff was at a  
10 special risk of falling "for any reason, let alone lack of vision."<sup>51</sup> Additionally, the  
11 ALJ found the record lacked any complaints by Plaintiff related to her obesity or  
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14 <sup>49</sup> See SSR 16-3p, 2016 WL 1119029; *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th  
15 Cir. 2014).

16 <sup>50</sup> AR 195.

17 <sup>51</sup> AR 28. Although, the ALJ inaccurately stated that the record contained "*no*  
18 documented episodes of falling," *see id.* (emphasis added), his reasoning remains  
19 nonetheless valid. Upon reviewing the entirety of the record as to the relevant  
20 period, the Court found one recorded instance in which Plaintiff reported falling  
21 after becoming dizzy while showering. *See* AR 1307 (July 2018: "patient had mild  
22 dizzy spell once, no new episodes, doing well today, patient states she is doing well  
23 at this time").

1 resulting functional limitations—this, despite the fact that Plaintiff remained  
2 obese during the entire relevant period and was regularly seen by medical  
3 providers, such as for treatment of her diabetes.<sup>52</sup>

4 Although an ALJ may not disregard a claimant’s testimony “*solely* because it  
5 is not substantiated affirmatively by objective medical evidence,”<sup>53</sup> the ALJ may  
6 nonetheless properly consider a lack of such evidence as one factor in the  
7 analysis.<sup>54</sup> As discussed below, the ALJ also considered other relevant factors and  
8 gave clear and convincing reasons for why they undermine Plaintiff’s symptom  
9 reports. Thus, the ALJ did not err in finding that—in conjunction with these other  
10 factors—the lack of supportive objective medical evidence and complaints in the  
11 record weighed against giving full credit to Plaintiff’s symptom reports.

### 12 3. Testimony Inconsistent with Medical Records

13 The ALJ did not discount Plaintiff’s symptom testimony based merely on a  
14 lack of corroborating evidence; the ALJ also found that express findings in the  
15 medical record are largely inconsistent with Plaintiff’s symptom testimony. For  
16 instance, agreeing with the medical expert’s testimony during the 2018 hearing,  
17 the ALJ noted that Plaintiff was “found repeatedly to have good vision in the left  
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19 <sup>52</sup> AR 28.

20 <sup>53</sup> *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (emphasis added).

21 <sup>54</sup> *See Lingenfelter*, 504 F.3d at 1040.

1 eye, no sensory loss, and no gait disturbance. In addition, her subjective and  
2 objective visual fields in her left eye were repeatedly normal.”<sup>55</sup> Then, in writing  
3 his 2019 decision, the ALJ went on to find “subsequent post-operative eye exams  
4 did not indicate any loss of [left-eye] peripheral vision and otherwise noted normal  
5 eye movement and pupil reactivity.”<sup>56</sup> The ALJ’s numerous citations point to  
6 substantial evidence supporting these findings, and Plaintiff does not appear to  
7 challenge them. Aside from her symptom testimony, Plaintiff neither cites to any  
8 evidence of ongoing vision loss in her left eye, nor does she articulate any other  
9 basis for the level of overall vision impairment she alleges.<sup>57</sup>

10 The same is true of Plaintiff’s claims regarding “difficulty standing and  
11 walking for long periods of time.”<sup>58</sup> Again, the ALJ cited to several physical exams  
12 that consistently showed a normal range of motion in all joints as well as normal  
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16 <sup>55</sup> AR 195 (cleaned up) (citing AR 615–21, 768, 773, 780, 790, 800, 817, 1004); *see*  
17 *also* AR 27–28, 105–111.

18 <sup>56</sup> AR 28 (cleaned up) (citing AR 1120–1134, 1288–1334).

19 <sup>57</sup> The Court need not consider matters that are not specifically and distinctly  
20 argued by a party. *See Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155,  
21 1161 n.2 (9th Cir. 2008); *Independent Towers v. Washington*, 350 F.3d 925, 929 (9th  
22 Cir. 2003).

23 <sup>58</sup> ECF No. 14 at 8. *See also* AR 112–13.

1 musculoskeletal, respiratory, and cardiovascular findings.<sup>59</sup> Plaintiff does not  
2 directly dispute these findings, instead highlighting that because of her “morbid  
3 obesity, hyperten[s]ion, and hyperlipidemia, [she] is considered to have metabolic  
4 syndrome.”<sup>60</sup> She cites no evidence that connects these diagnoses, or the findings  
5 upon which they are based, to her symptom reports or asserted limitations,  
6 seemingly trying to establish such connections through general inference.<sup>61</sup> But, as  
7 the Social Security Administration has explained, it would be inappropriate for an  
8 ALJ to “make general assumptions about the severity of functional effects of  
9 obesity combined with another impairment.”<sup>62</sup>

10 By articulating and explaining several inconsistencies between Plaintiff’s  
11 testimony and the medical evidence of record, the ALJ provided specific, clear, and  
12 convincing reasons supported by substantial evidence for discounting Plaintiff’s  
13 claimed limitations related to vision impairment and difficulty with standing and  
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18 <sup>59</sup> AR 27 (citing AR 1120–1134, 1288–1334).

19 <sup>60</sup> ECF No. 14 at 5.

20 <sup>61</sup> *Cf.* ECF No. 14 at 5–6 (citing various records measuring data such as her weight,  
21 BMI, blood pressure, and blood sugar levels, but citing nothing tying such data or  
22 the resulting diagnoses to any functional limitations).

23 <sup>62</sup> SSR 19-2p, *Titles II & XVI: Evaluating Cases Involving Obesity* (May 20, 2019).

1 walking for extended periods.<sup>63</sup> Moreover, even if the ALJ had erred by rejecting  
 2 Plaintiff's testimony about being unable to sit or stand for an extended period, such  
 3 error would be harmless.<sup>64</sup> At the 2018 hearing, the vocational expert testified that  
 4 even if the assessed RFC were further limited to "needing a sit/stand option at  
 5 will," Plaintiff could perform the work of a tanning salon attendant, a ticket taker,  
 6 and an inspector hand packager.<sup>65</sup>

#### 7 4. Activity of Daily Living: Driving

8 While presenting testimony at each of the hearings, Plaintiff admitted that  
 9 she still sometimes drives for transportation. Moreover, when the ALJ inquired  
 10 further, Plaintiff expressly confirmed at both hearings that she can see well enough  
 11 to read the road signs and navigate while driving.<sup>66</sup>

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 14 <sup>63</sup> See *Ghanim*, 763 F.3d at 1163; see also *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
 15 1989) (explaining that the existence—and significance—of any inconsistency  
 16 between a claimant's asserted limitation and a reported activity will necessarily  
 17 depend on the nature, level, and context of both).

18 <sup>64</sup> An error is harmless if it is inconsequential to the decision or if the ALJ's path  
 19 "may reasonably be discerned." *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d  
 20 1090, 1099 (9th Cir. 2014) (quoting *Alaska Dep't of Envtl. Conserv. v. EPA*, 540  
 21 U.S. 461, 497 (2004)).

22 <sup>65</sup> AR 122.

23 <sup>66</sup> AR 115, 124, 130.



1           When evaluating the intensity, persistence, and limiting effects of a  
2 claimant's symptoms, an ALJ may properly consider any inconsistencies among the  
3 claimant's symptom reports, the reported activities, the claimant's prior  
4 statements, and/or other evidence of record.<sup>67</sup> Here, it was reasonable for the ALJ  
5 to find that Plaintiff's admitted driving activity belied the severe vision-related  
6 limitations that she alleges.<sup>68</sup> Indeed, because of the importance of having  
7 adequate vision when driving a vehicle, by highlighting this inconsistency in  
8 Plaintiff's testimony, the ALJ articulated a specific, clear, and convincing reason  
9 supported by substantial evidence for discounting the related symptom reports.<sup>69</sup>

10           5.     Conclusion as to Symptom Reports

11           As explained above, the ALJ gave more than one specific, clear, and  
12 convincing reason for discounting Plaintiff's symptom reports. As such, any errors  
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16 <sup>67</sup> SSR 16-3p, 2016 WL 1119029; 20 C.F.R. §§ 404.1529(c), 416.929(c); *see also Fair*,  
17 885 F.2d at 603.

18 <sup>68</sup> AR 195.

19 <sup>69</sup> *See Ghanim*, 763 F.3d at 1163; *see also Fair*, 885 F.2d at 603 (explaining that  
20 whether a claimant's alleged limitations is truly inconsistent with a reported  
21 activity—and the significance of any such inconsistency—will necessarily depend  
22 on the nature, level, and context of both the claimed limitation and the activity in  
23 question).

1 in the ALJ's other asserted reasons would be considered harmless, and the Court  
2 therefore need not address them.<sup>70</sup>

3 **B. Dr. Hernandez's Medical Opinions: Plaintiff fails to establish**  
4 **prejudicial error.**

5 In April 2019, Dr. Hernandez, Plaintiff's treating physician, completed a  
6 Physical Functional Evaluation of Plaintiff, using a form provided by the  
7 Washington State Department of Social & Health Services.<sup>71</sup> In it, Dr. Hernandez  
8 noted that Plaintiff's chief complaint—and stated reason for being unable to  
9 work—was that she cannot see with her right eye. Describing her treatment  
10 history, Dr. Hernandez explained that Plaintiff had experienced a diabetes-related  
11 complication and eye surgery, resulting in “complete 100% blindness of her right  
12 eye.”<sup>72</sup>

13 In assessing Plaintiff's workplace limitations, Dr. Hernandez opined, “Due to  
14 poor vision[,] patient at risk of falling, work related injuries; unable to work at  
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18 <sup>70</sup> See *Carmickle*, 533 F.3d at 1162-63; *Molina*, 674 F.3d at 1115 (“[S]everal of our  
19 cases have held that an ALJ's error was harmless where the ALJ provided one or  
20 more invalid reasons for disbelieving a claimant's testimony, but also provided  
21 valid reasons that were supported by the record.”).

22 <sup>71</sup> AR 1112–14.

23 <sup>72</sup> AR 1112.

heights.”<sup>73</sup> He indicated that Plaintiff’s “Class 3 obesity” causes her to have a moderate limitation (defined on the form as “[s]ignificant interference”) in her ability to perform the basic work-related activities of carrying, pushing, pulling, reaching, and stooping.<sup>74</sup> Listing those same activities—but this time including the additional activity of “seeing”—Dr. Hernandez indicated that Plaintiff’s right-eye blindness causes her to have a marked limitation (defined on the form as “[v]ery significant interference with the ability to perform”) in her ability to perform those same basic work-related activities.<sup>75</sup> And, Dr. Hernandez opined, given Plaintiff’s impairments, sedentary work is the highest level of work that she can predictably sustain “over a normal workday and workweek on an ongoing, appropriate, and independent basis.”<sup>76</sup>

The ALJ assigned little weight to Dr. Hernandez’s opinion limiting Plaintiff to sedentary work.<sup>77</sup> Plaintiff argues the ALJ erred in doing so.

#### 1. The Applicable Standard and the ALJ’s Provided Reasoning

Dr. Hernandez’s medical opinions that limit Plaintiff to the sedentary exertional level are contradicted by the reviewing opinions of Dr. Leinenbach, who

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<sup>73</sup> AR 1113.

<sup>74</sup> AR 1113.

<sup>75</sup> *See* AR 1113.

<sup>76</sup> *See* AR 1114.

<sup>77</sup> AR 29.

1 opined that Plaintiff was instead capable of performing work at the “light  
 2 exertional level with moderate environmental, postural, and motor limitations.”<sup>78</sup>  
 3 As such, to reject Dr. Hernandez’s opinions as a treating physician, the ALJ was  
 4 required to articulate “specific and legitimate reasons” supported by substantial  
 5 evidence.<sup>79</sup>

6 Here, in rejecting Dr. Hernandez’s opinions, the ALJ said,

7 Dr. Hernandez cites blindness and obesity as the impairments causing  
 8 the functional limits, but he fails to offer objective evidence in support  
 9 of his opinions or offer adequate explanation as to why right eye  
 10 blindness and obesity physically limits the claimant to lifting,  
 11 carrying, sitting, standing, and walking at the sedentary exertional  
 level. Moreover, this opinion is inconsistent with Dr. [Hernandez]’s  
 own treatment notes, which show instead normal eye and  
 musculoskeletal exams well into 2019 and are devoid of any claimant  
 complaints as to her exertional abilities.<sup>80</sup>

## 12 2. Lack of Support/Explanation

13 Although Plaintiff is correct that her right-eye blindness and obesity “are  
 14 well-established in the record,”<sup>81</sup> this does not change the fact that Dr. Hernandez  
 15 failed to explain how those diagnosed impairments result in the functional  
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19 <sup>78</sup> AR 1135–37.

20 <sup>79</sup> *Lester*, 81 F.3d at 830.

21 <sup>80</sup> AR 29 (cleaned up) (citing AR 1120–34, 1288–1334).

22 <sup>81</sup> ECF No. 14 at 11.

1 limitations he identified or the limitations are so severe.<sup>82</sup> Further, nothing in  
2 Dr. Hernandez's treatment notes or the other medical records explains why  
3 Plaintiff's right-eye blindness or obesity cause such severe limitations in carrying,  
4 pushing, pulling, reaching, and stooping, much less limit her to sedentary work.

5 An ALJ "need not accept the opinion of any physician, including a treating  
6 physician, if that opinion is brief, conclusory, and inadequately supported by  
7 clinical findings."<sup>83</sup> Accordingly, Dr. Hernandez's failure to adequately support or  
8 explain his opinions amounts to a specific and legitimate reason, supported by  
9 substantial evidence, for assigning those opinions little weight.

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13 <sup>82</sup> Given the Plaintiff's lack of depth perception and right-side peripheral vision  
14 resulting from her right-eye blindness, the record arguably contains sufficient  
15 evidence and explanation to support Dr. Hernandez's opinion that Plaintiff was at  
16 risk of falling and work-related injuries. But the assessed RFC addresses these  
17 limitations by barring work that involves exposure to hazards or "requires depth  
18 perception or more than occasional peripheral vision on the right side." *See* AR 26,  
19 194. Plaintiff does not explain why these limitations do not suffice.

20 <sup>83</sup> *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009)  
21 (quoting *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)); *see also* 20 C.F.R.  
22 §§ 404.1527(c), 416.927(c) (each listing factors for the ALJ to consider when  
23 weighing medical opinions).

1           3.     Inconsistencies with Treatment Notes

2           The ALJ rationally interpreted Dr. Hernandez’s opinions as being  
3 inconsistent with his own treatment notes regarding Plaintiff’s eye and  
4 musculoskeletal exam results.<sup>84</sup> “A physician’s opinion can be discredited based on  
5 contradictions between the opinion and the physician’s own notes.”<sup>85</sup> Especially  
6 given the lack of any explanation to resolve them, these inconsistencies are  
7 “specific and legitimate reasons that are supported by substantial evidence” for  
8 discrediting Dr. Hernandez’s opinions.<sup>86</sup>

9           4.     Conclusion as to Dr. Hernandez’s Medical Opinions

10          As explained above, the ALJ gave more than one specific and legitimate  
11 reason for discrediting Dr. Hernandez’s medical opinions. As such, any errors in  
12 the ALJ’s other asserted reasons would be considered harmless, and the Court  
13 therefore need not address them.<sup>87</sup>

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17 <sup>84</sup> See, e.g., AR 1130, 1304, 1305, 1315.

18 <sup>85</sup> *Buck v. Berryhill*, 869 F.3d 1040, 1050 (9th Cir. 2017)

19 <sup>86</sup> *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017); see also *Holohan v.*  
20 *Massanari*, 246 F.3d 1195, 1202 n.2 (9th Cir. 2001) (“Under certain circumstances,  
21 a treating physician’s opinion on some matter may be entitled to little if any  
22 weight.” (quoting 20 C.F.R. § 404.1527)).

23 <sup>87</sup> See *Carmickle*, 533 F.3d at 1162–63.

1 **C. PA Huerta’s Other-Source Opinions: Plaintiff failed to establish**  
2 **prejudicial error.**

3 PA Huerta, one of Plaintiff’s treating providers, completed three separate  
4 forms regarding Plaintiff’s diagnoses and resulting functional limitations. In  
5 August 2015, he noted Plaintiff has “problems [concerning] her vision” and is  
6 overweight with “problems [with] balance.”<sup>88</sup> He indicated that Plaintiff’s diabetic  
7 retinopathy and “DJD” each cause a marked limitation in her ability to perform  
8 basic work activities, but he did not specify which work activities were affected.<sup>89</sup>  
9 PA Huerta opined that Plaintiff is permanently unable to meet the demands of  
10 even sedentary work.

11 Then, in June 2017, PA Huerta wrote that Plaintiff’s diagnoses included  
12 uncontrolled diabetes, blindness in her right eye, hypertension, and  
13 hyperlipidemia.<sup>90</sup> He opined that if Plaintiff were to work full time, she would  
14 “miss 4 or more days per month” on average. A few months later, in September  
15 2017, PA Huerta wrote that Plaintiff’s chief complaints were blindness in the right  
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18 <sup>88</sup> AR 623–25.

19 <sup>89</sup> AR 1072.

20 <sup>90</sup> AR 681–82. The Court presumes the “DJD” notation refers to degenerative joint  
21 disease. *See Degenerative joint disease (DJD)*, Stedmans Medical Dictionary,  
22 254120 (2014) (synonym for osteoarthritis).  
23

1 eye after enucleation, a history of diabetes, hypertension, and “CRF.”<sup>91</sup> He opined  
 2 that Plaintiff’s “blindness” was so severe that she could not perform basic work-  
 3 related activities and that her diabetes also would cause a moderate limitation in  
 4 work-related activities. PA Huerta again opined that Plaintiff would be unable to  
 5 meet the demands of even sedentary work, explaining that the “prognosis [is] bad  
 6 of [the left] eye also.”<sup>92</sup>

7 The ALJ assigned little weight to PA Huerta’s opinions. Plaintiff argues the  
 8 ALJ erred in doing so.

9 1. The Applicable Standard and the ALJ’s Provided Reasoning

10 Based on the filing date of Plaintiff’s applications, as a physicians’ assistant,  
 11 PA Huerta is considered an “other source” under the applicable Social Security Act  
 12 regulations.<sup>93</sup> Accordingly, to discount PA Huerta’s opinions, the ALJ was required  
 13 to give “germane reasons” supported by substantial evidence.<sup>94</sup>

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 16 <sup>91</sup> AR 1077–79. The Court presumes the “CRF” notation refers to chronic renal  
 17 failure. *See* Ayman Karkar, *Caring for Patients with CRF: Rewards and Benefits*,  
 18 National Library of Medicine, (2011) *available at*  
 19 [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3097050/#:~:text=Chronic%20renal](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3097050/#:~:text=Chronic%20renal%20failure%20(CRF)%20or,resulting%20in%20permanent%20kidney%20failure.)  
 20 [%20failure%20\(CRF\)%20or,resulting%20in%20permanent%20kidney%20failure.](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3097050/#:~:text=Chronic%20renal%20failure%20(CRF)%20or,resulting%20in%20permanent%20kidney%20failure.)

21 <sup>92</sup> AR 1117.

22 <sup>93</sup> *See* 20 C.F.R. §§ 404.1513(d)(1), 416.913(d)(1) (2015).

23 <sup>94</sup> *See Molina v.*, 674 F.3d at 1111.



1 In assigning little weight to PA Huerta's opinions, the ALJ explained:

2 [I]n all three instances he fails to offer objective evidence or  
 3 explanation in support of his opinions or offer adequate explanation as  
 4 to why right eye blindness physically limits the claimant to lifting,  
 5 carrying, sitting, standing, and walking at less than the sedentary  
 6 exertional level when primary care records note no such restrictions,  
 7 and the claimant reported a wide variety of daily activities that  
 8 exceed these limitations, including performing personal care,  
 9 spending time with her grandchildren, shopping, preparing meals,  
 10 and going out socially. I find his opinions unsupported and markedly  
 11 inconsistent with the longitudinal record.<sup>95</sup>

## 2. Specific and Germane Reasons

3 For the same reasons discussed above regarding Dr. Hernandez's opinions,  
 4 the ALJ did not err in finding PA Huerta failed to adequately support or explain  
 5 his opinions; nor did the ALJ err in finding those opinions inconsistent with the  
 6 longitudinal record. Even considering the entirety of the record, it is unclear how  
 7 the diagnoses and problems that PA Huerta lists in his opinions are connected to  
 8 the functional limitations he opined on the forms.<sup>96</sup> PA Huerta's opinions appear  
 9 largely inconsistent with the results of Plaintiff's left-eye examinations and other  
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16 <sup>95</sup> AR 28 (cleaned up).

17 <sup>96</sup> For instance, Court is unable to determine how PA Huerta arrived at the  
 18 diagnoses of degenerative joint disease or chronic renal failure—let alone how  
 19 those conditions would result in the limitations he attributed to them. *Cf., e.g.,*  
 20 AR 764, 854, 1122 (each showing glomerular filtration rates seemingly negative for  
 21 chronic kidney disease or kidney failure); AR 854 (same in July 2017); AR 1122  
 22 (same in April 2018).  
 23

1 physical examinations, and he failed to offer any explanation capable of resolving  
2 those inconsistencies.<sup>97</sup> It is also unclear to what extent PA Huerta based the  
3 functional limitations he assigned to Plaintiff's "blindness" on his poor prognosis  
4 for Plaintiff's left eye. And, contrary to PA Huerta's prognosis, the medical records  
5 show that Plaintiff's left eye improved. The ALJ therefore provided specific and  
6 germane reasons supported by substantial evidence for assigning little weight to  
7 PA Huerta's opinions.

8 Moreover, in noting that PA Huerta's opinions were inconsistent with  
9 Plaintiff's activities, the ALJ cited to his prior analysis of Plaintiff's reported  
10 activities, including her admission to driving.<sup>98</sup> For the same reasons already  
11 discussed above regarding Plaintiff's symptom reports, it was reasonable for the  
12 ALJ to find the activity of driving inconsistent with the extreme vision-based  
13 limitations opined by PA Huerta. Thus, this was yet another specific and germane  
14 reason supported by substantial evidence for assigning little weight to PA Huerta's  
15 opinions.

### 16 3. Conclusion as to PA Huerta's Opinions

17 As explained above, the ALJ gave more than one specific and germane  
18 reason for discrediting PA Huerta's opinions. Any errors in the ALJ's other  
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22 <sup>97</sup> See, e.g., AR 615–21, 768, 773, 780, 790, 800, 817, 1004, 1120–1134, 1288–1334.

23 <sup>98</sup> See AR 28 (citing to AR 195).

1 asserted reasons would therefore be considered harmless, and the Court therefore  
2 need not address them.<sup>99</sup>

3 **V. Conclusion**

4 Plaintiff failed to establish that the ALJ substantially erred in concluding  
5 that she is not disabled for purposes of the Social Security Act.

6 Accordingly, IT IS HEREBY ORDERED:

- 7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.  
8 2. The Commissioner's Motion for Summary Judgment, **ECF No. 15**, is  
9 **GRANTED**.  
10 3. The decision of the ALJ is **AFFIRMED**.  
11 4. The Clerk's Office shall enter **JUDGMENT** in favor of the  
12 Commissioner.  
13 5. The case shall be **CLOSED**.

14 IT IS SO ORDERED. The Clerk's Office is directed to file this order and  
15 provide copies to all counsel.

16 DATED this 8<sup>th</sup> day of September 2022.

17 s/Edward F. Shea  
18 EDWARD F. SHEA  
19 Senior United States District Judge  
20  
21  
22

23 <sup>99</sup> See *Carmickle*, 533 F.3d at 1162–63.